

6 September 2021

**VIA ELECTRONIC MAIL ONLY**

[kwasi.kwarteng.mp@parliament.uk](mailto:kwasi.kwarteng.mp@parliament.uk)  
[boris.johnson.mp@parliament.uk](mailto:boris.johnson.mp@parliament.uk)  
[rishi.sunak.mp@parliament.uk](mailto:rishi.sunak.mp@parliament.uk)  
[alok.sharma.mp@parliament.uk](mailto:alok.sharma.mp@parliament.uk)  
[newproceedings@governmentlegal.gov.uk](mailto:newproceedings@governmentlegal.gov.uk)

**For the attention of:**

**Rt Hon Kwasi Kwarteng MP, Secretary of State  
for Business, Energy and Industrial Strategy**  
1 Victoria Street  
London  
SW1H 0ET

**Rt Hon Boris Johnson MP, Prime Minister,  
First Lord of the Treasury**  
House of Commons  
London  
SW1A 0AA

**C/o: Government Legal Department**  
102 Petty France  
Westminster  
London  
SW1H 9GL

**Rt Hon Rishi Sunak MP, Chancellor of the Exchequer**  
HM Treasury  
The Correspondence and Enquiry Unit  
1 Horse Guards Road  
London  
SW1A 2HQ

**Rt Hon Alok Sharma MP, President for COP 26**  
Cabinet Office  
70 Whitehall  
London  
SW1A 2AS

Dear Sir/Madam

**LETTER BEFORE ACTION UNDER THE PRE-ACTION PROTOCOL FOR JUDICIAL REVIEW**  
**RESPONSE REQUIRED WITHIN 14 DAYS**

**Introduction**

1. We write on behalf of our clients, Daze Aghaji (the “**First Claimant**”) and Peter Garforth (the “**Second Claimant**”), in accordance with the Pre-Action Protocol for Judicial Review and in compliance with the Civil Procedure Rules.
2. If we do not receive a satisfactory response to this letter within the timeframe specified, we propose to advise our clients to make an application for judicial review, without further reference to you.

## Summary of Claim

3. Human-induced climate change has serious adverse consequences for food security, water security, human health, and the life-supporting natural world, affecting citizens both in the UK and around the world. These adverse consequences become more significant the more carbon we emit, with harms substantially reduced by limiting warming to below 1.5°C. The Government is subject to a slew of obligations to reduce greenhouse gas emissions and thus mitigate climate change: the Paris Agreement temperature goal to keep global warming to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels; the UK's own Climate Change Act 2008 ("**CCA 2008**"), which imposes a legal obligation to achieve net zero emissions by 2050, and the protection of individuals' lives, health and wellbeing laid down in the European Convention on Human Rights ("**ECHR**").
4. The global temperature has already risen by between 0.8 and 1.1°C, meaning that the UK is already facing a number of adverse impacts from climate change, including coastal erosion from sea level rise, increased flooding and temperature extremes. Given the extreme risks to individuals arising from temperature increases above 2°C, it is imperative for the Government to put in place, now, policies that require adaptation to climate change, so that individuals can, to the greatest extent possible, be protected from the worst impacts of dangerous climate change. The CCA 2008 therefore requires the Secretary of State to put before Parliament proposals and policies for adaptation to climate change.
5. Despite repeatedly, and loudly, acknowledging the climate emergency and the need for urgent action, the Government is in breach of its legal obligations to put in place policies to mitigate climate change by reducing emissions, and to adapt to climate change and protect individuals by preparing for the effects of dangerous climate change. In terms of mitigation, the policies are so deficient that it is effectively as if the Government is currently hoping that, in under a decade from now, the UK will miraculously stop emitting for three whole years, in order to stay on track to achieving Net Zero. In terms of adaptation, the Government is in a worse position than it was three years ago and has failed to put in place policies even to adapt to 2°C of warming.
6. These policy gaps have repeatedly been brought to the Government's attention, and over the past three years they have been highlighted in the strongest terms, but the Government has failed consistently to put the requisite policies in place. As a result, the Committee on Climate Change concluded in June 2021:

*"[I]t is hard to discern any comprehensive strategy in the climate plans we have seen in the last 12 months. There are gaps and ambiguities. Climate resilience remains a second-order issue, if it is considered at all. We continue to blunder into high-carbon choices. Our Planning system and other fundamental structures have not been recast to meet our legal and international climate commitments."*

7. This claim sets out how the Government's failures to address the policy gaps for climate mitigation and climate adaptation breach its legal obligations under the CCA 2008 and breach the Claimants' human rights. It also explains why it would be grossly irresponsible for the Government to place any significant reliance on untested high-risk negative emissions technology when it formulates its mitigation policies and that to do so would place a disproportionate burden on the First Claimant, youth and future generations.

## Proposed Parties

8. **The Claimants:** Daze Aghaji and Peter Garforth.

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- a. Daze Aghaji is 21 years old. She has, over the past few years, advocated for change to fight the climate crisis which has included her running to be a Member of the European Parliament. Daze has been directly affected by climate change as she suffers adverse health from air pollution exacerbated by climate change and her family in Nigeria has been affected by flooding caused/exacerbated by climate change.
  - b. Peter Garforth is a resident of Skipsea, East Yorkshire, which is the fastest eroding coastline in Northern Europe and one of the most vulnerable communities in the whole of England to the impacts of climate change-related sea-level rise. He is directly affected, as he lives on the northern part of the worst affected stretch of coastline, which runs from Bridlington to Spurn Point.
9. **The Defendants:** Secretary of State for Business, Energy and Industrial Strategy; the Prime Minister; the Chancellor of the Exchequer; and the Rt Hon Alok Sharma MP, President for COP 26.
  10. **Interested Party:** The Committee on Climate Change.
  11. If you consider our explanation of the facts or underlying legal position is wrong in any way, please be clear in saying so in your response, explaining in full the nature of, and basis for, any disagreement. If there are any documents or other materials which you consider relevant to your response, please provide copies of them. If you later raise new factual or legal points, or provide further documents, which could have been raised or provided in response to this letter then we may rely on that fact in relation to the costs of any litigation.

#### **Details of the matter being challenged**

12. The factual background to the claim is set out below.
13. The grounds of claim are:
  - a. Continuing failure to close the policy gap to meet the Fourth and Fifth Carbon Budgets, in breach of section 13(1) CCA 2008 and in violation of the Claimants' rights protected by Articles 2 and 8 of the ECHR, taken together, in the case of the First Claimant, with Article 14. This arises both from the failure to close the policy gap to the target in existence at the time the budgets were set (80% reduction) and the even greater failure to close the policy gap now required in light of the Net Zero obligation and the Sixth Carbon Budget.
  - b. Breaches of sections 13 and 14 of the CCA 2008 in relation to the Sixth Carbon Budget, arising from the ongoing failure to publish "*as soon as is reasonably practicable*" after the making of the order setting the Sixth Carbon Budget "a report which sets out the proposals and policies for meeting the carbon budgets for the current and future budgetary periods up to and including that period".
  - c. Continuing failure to close the adaptation policy gap, in breach of sections 13 and 58 of the CCA 2008 and in violation of the Claimants' rights protected by Articles 2 and 8 of the ECHR, taken together, in the case of the First Claimant, with Article 14.
  - d. Breach of the Claimants' rights protected by Articles 2 and 8 of the ECHR, taken together, in the case of the First Claimant, with Article 14, if the Government fails to limit its reliance on negative emissions technologies.

## Factual Background

### Climate Change

14. In October 2018, the Intergovernmental Panel on Climate Change (“**IPCC**”) reported in its *Special Report on Global Warming of 1.5°C* (known as “**SR1.5**”), that human activities had caused the Earth’s surface to warm by more than 1°C since the industrial period of 1851-1900.<sup>1</sup> The SR1.5 Report made two further significant findings: (i) the climate impacts of 2°C of warming would be very much more serious than those of 1.5°C of warming; and (ii) there were then only 12 years in which to take action to prevent global temperature rise above 1.5°C.
15. Warming substantially greater than the global average is being experienced in most land regions: up to twice as great for hot extremes in mid-latitudes and more than three times greater in the cold season in the Arctic.<sup>2</sup> Human-induced climate change has led to increases in the intensity and frequency of many extreme weather events,<sup>3</sup> in particular hot extremes in all land regions, heavy precipitation in several regions, and droughts in some regions. In many regions, changing patterns of precipitation and the melting of snow and ice are altering the volume and seasonal timing of water flows in rivers, affecting both the quantity and quality of water resources, and the potential occurrence of peak flow events, defined as the maximum instantaneous flow occurring in a year.<sup>4</sup> Climate zones are shifting, including expansion of arid zones and contraction of polar zones.<sup>5</sup>
16. Human-induced climate change has adverse consequences for natural and human systems, in particular food and water security, and human health.<sup>6</sup> Food production, especially in developing countries, is already being adversely affected as is water quality and quantity in many parts of the world, and human health is being affected by vector-borne and water-borne- diseases and heat stress mortality.
17. These adverse consequences will become even more significant in the coming decades as the climate continues to warm,<sup>7</sup> i.e., the impacts of climate change are projected to be more severe if global warming is not limited to 1.5°C and rises to 2°C, and much more severe still if the world experiences warming in excess of 3°C by the latter part of the century.<sup>8</sup> Every fraction of a degree of warming increases the adverse effects of climate change.
18. In July 2021, the Royal Meteorological Society published its report on *the State of the UK Climate 2020*. This stated that: “*Year 2020 was third warmest, fifth wettest and eight sunniest on record for the UK. No other year has fallen in the top-10 for all three variables for the UK.*”<sup>9</sup> “*Mean sea level around the UK has risen by approximately 1.5 mm per year<sup>-1</sup> on average from the start of the 20th century*”.<sup>10</sup> From 1981 – 2000, the level of the seas around the UK rose by around 6.5 cm, and the levels are estimated to be rising at 2.5 cm per decade.<sup>11</sup> The seas around the UK will continue to rise over the three decades to 2050 and by that point sea levels could be around 10-30 cm higher than over 1981 – 2000, depending on the location in the UK.<sup>12</sup> There has been significant loss of

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<sup>1</sup> IPCC 2018 *Special Report on Global Warming of 1.5°C*, Summary for Policymakers (“**SPM**”) A1.

<sup>2</sup> UNEP 2021, *Making Peace with Nature* Executive Summary Section B, and Section 3.1 main report.

<sup>3</sup> IPCC *Special Report on Global Warming of 1.5°C*, SPM A1.3.

<sup>4</sup> UNEP *Making Peace with Nature*, pg 67.

<sup>5</sup> *Ibid.*

<sup>6</sup> UNEP *Making Peace with Nature*, pg 27; IPCC *Special Report on Global Warming of 1.5°C*, SPM A3.1.

<sup>7</sup> IPCC 2018 *Special Report on Global Warming of 1.5°C*, SPM B5.

<sup>8</sup> *Ibid* B3-B5; IPCC 2019 *Special Report on the Ocean and Cryosphere in a Changing Climate*, SPM B1-B5.

<sup>9</sup> Royal Meteorological Society *State of the UK Climate 2020*, pg 7.

<sup>10</sup> *Ibid*, pg 8.

<sup>11</sup> CCC *Progress in adapting to climate change Report to Parliament* (June 2021), pg 40.

<sup>12</sup> *Ibid*, pg 44.

land at Skipsea, East Yorkshire (faster than any other coastline in Northern Europe), Fairbourne, North Wales, and Happisburgh, Norfolk.

19. Along with coastal change, the key impacts for the UK of climate change are the risk of flooding, the impact of high temperature on human health and well-being, risks to natural capital, risks of future water shortages, impacts on the global food system, and emerging pests and diseases.<sup>13</sup>
20. 2020 alone saw an exceptionally wet February in the UK, with storms Ciara and Dennis causing widespread flooding, followed by an exceptionally sunny spring resulting in a sharp reduction in soil moisture and record minimum spring river flows and depleted reservoir stocks.<sup>14</sup> July then saw the UK's third hottest day on record and Southern England experienced "*one of the most significant heatwaves of the last 60 years during early August 2020*".<sup>15</sup> Storms Ellen and Francis in late August were separated by only a few days and "*were two of the most notable August storms in the UK in the last 50 years*",<sup>16</sup> bringing 80 mph winds and coastal flooding.<sup>17</sup>
21. On 9 August 2021 the IPCC published the contribution of Working Group 1 to the IPCC's Sixth Assessment Report, regarding the physical science basis of climate change. Its key findings of fact can be summarised as follows:<sup>18</sup>
  - a. It is unequivocal that human influence has warmed the atmosphere, ocean and land. Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred.
  - b. The scale of recent changes across the climate system as a whole and the present state of many aspects of the climate system are unprecedented when compared to the globe's climate over many thousands of years.
  - c. Human-induced climate change is already affecting many weather and climate extremes in every region across the globe; evidence of observed changes in extremes such as heatwaves, heavy precipitation, droughts, and tropical cyclones and, in particular, their attribution to human influence, has strengthened since the IPCC published its Fifth Assessment Report in 2013.
  - d. Global warming of 1.5°C and 2°C will be exceeded during the 21<sup>st</sup> century unless deep reductions in CO<sub>2</sub> and other greenhouse gas emissions occur in the coming decades.<sup>19</sup>
  - e. Limiting human-induced global warming to a specific level requires limiting cumulative CO<sub>2</sub> emissions, reaching at least net zero CO<sub>2</sub> emissions, along with strong reductions in other greenhouse gas emissions. Strong, rapid and sustained reduction in CH<sub>4</sub> (methane) emissions would also limit the warming effect resulting from declining aerosol pollution and would improve air quality.
22. The IPCC estimates a remaining carbon budget of 500 gigatonnes of CO<sub>2</sub> ("**GtCO<sub>2</sub>**") (from 2020) for a 50:50 chance of restricting warming to 1.5°C, i.e., a little over 420GtCO<sub>2</sub> from the start of 2022.<sup>20</sup> This new budget represents just over ten years' worth of global emissions at pre-pandemic (2019) levels (a level that 2021 is on track to match).

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<sup>13</sup> HM Government *UK Climate Risk Assessment 2017*, pgs 10-17.

<sup>14</sup> Royal Meteorological Society *State of the UK Climate 2020*, pgs 43-44.

<sup>15</sup> *Ibid*, pgs 45-46.

<sup>16</sup> *Ibid*, pg 8.

<sup>17</sup> Met Office *Storms Ellen and Francis*, August 2020, pg 1.  
[https://www.metoffice.gov.uk/binaries/content/assets/metofficegovuk/pdf/weather/learn-about/uk-past-events/interesting/2020/2020\\_08\\_storms\\_ellen\\_francis.pdf](https://www.metoffice.gov.uk/binaries/content/assets/metofficegovuk/pdf/weather/learn-about/uk-past-events/interesting/2020/2020_08_storms_ellen_francis.pdf).

<sup>18</sup> IPCC, 2021: SPM in *Climate Change 2021: The Physical Science Basis Contribution of Working Group 1 to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge University Press.

<sup>19</sup> This chimes with the IPCC's warning in its *Special Report on Global Warming of 1.5°C* that there were then only 12 years in which to take action to prevent global temperature rise above 1.5°C.

<sup>20</sup> IPCC, 2021, Table SPM2 and paras D.1.3-D.1.8.

23. The conclusions of the IPCC's Working Group 1 are not surprising, nor are many of them novel. It has been well known and well documented, over the past decade, that there is a climate emergency, that urgent action had to be taken to reduce greenhouse gas emissions, and that the policy levers required to reduce these emissions should urgently be put in place to avoid the very harmful impacts of dangerous climate change.

#### *The Paris Agreement*

24. The overarching international treaty addressing climate change is the UN Framework Convention on Climate Change ("**UNFCCC**"). Article 2 articulates that the "*ultimate objective*" of the Framework Convention "*and any related legal instruments that the Conference of Parties may adopt*" (which includes the Paris Agreement) is to achieve "*stabilization of greenhouse gas concentrations in the atmosphere*" at a level that would prevent "dangerous" human interference with the climate system.
25. On 12 December 2015, the State Parties to the UNFCCC adopted the Paris Agreement in relation to climate change. The recitals to the agreement recognise "*the need for an effective and progressive response to the urgent threat of climate change on the basis of the best available scientific knowledge*", along with "*the importance of the engagements of all levels of government and various actors... in addressing climate change*".
26. Article 2 of the Paris Agreement strengthens the global response in implementing the UNFCCC, in particular by committing Parties to three key goals, the first of which is known as the "long-term temperature goal": to hold "the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change".
27. The wording "*Holding the increase in the global average temperature to well below 2°C above pre-industrial levels ...*" formulates a clear upper limit that must be regarded as binding hard law and an obligation of result, not only of conduct. The threshold of "*well below 2°C*" (emphasis added) is not an entitlement for Parties to exploit the 'space' up to 2°C. It is a maximum limit that shall not be reached. The Paris Agreement's temperature goal thus contains strong language of legal effect, leaving no discretion for Parties to follow weaker temperature goals.
28. In order to achieve the long-term temperature goal, Article 4(1) requires Parties to "*aim to reach global peaking of greenhouse gas emissions as soon as possible*". This aim includes Parties undertaking "*rapid reductions*" after global peaking, "*in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty*". In other words, the Paris Agreement embodies not just a consideration concerning 2050 and beyond ("*second half of this century*"), but a significant focus on emissions reductions in the years up to that point.
29. Article 3 of the Paris Agreement imposes legal obligations on parties "*to undertake and communicate*" nationally determined contributions ("**NDCs**"), which represent "ambitious efforts", as defined by Articles 4, 7, 9, 10, 11 and 13, "*with the view to achieving*" the temperature goal in Article 2. The NDCs must also "*represent progression over time*".
30. On 24 November 2020, the Secretary of State for Business, Energy and Industrial Strategy asked the Committee on Climate Change (the "**CCC**"), an independent statutory body established under the CCA 2008, for advice on the level of the UK's NDC under the Paris Agreement. The CCC responded on 3 December 2020 recommending that the UK commit to reduce territorial

emissions by at least 68% by 2030 compared to 1990 levels – excluding international aviation and shipping (“IAS”) emissions. The Secretary of State accepted that recommendation and the UK’s NDC was communicated to the UNFCCC on 12 December 2020. While the UK’s NDC includes transparency information on how the target was developed and is quantified, it does not address the policy gap that exists with respect to the achievement of the UK’s 2030 commitment.

#### *Setting of the Fourth, Fifth and Sixth Carbon Budgets*

31. Under section 1 of the CCA 2008, the Government is required to ensure that the “*net UK carbon account*” for 2050 is “*at least 100% lower than the 1990 baseline*”. This 2050 ‘net zero’ target was introduced in June 2019 and replaced the previous target of a reduction of “at least 80%”, following the UK’s ratification of the Paris Agreement and the advice of the CCC.
32. Section 4 of the CCA 2008 requires the setting of five-yearly carbon budgets, twelve years in advance of the budget period in question. The budgets and 2050 target under the CCA 2008 cover the full range of major greenhouse gases, including carbon dioxide (CO<sub>2</sub>), methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride.
33. The CCC’s role is to monitor and advise the Government on progress towards the 2050 climate target and the setting of carbon budgets.<sup>21</sup>
34. The Fourth Carbon Budget, for the period 2023-2027, is set at 1,950 million tonnes carbon dioxide equivalent (“MtCO<sub>2e</sub>”) and requires an average of a 51% reduction in emissions compared with 1990 levels. It was set so as to be on track for the previous target of an 80% reduction in greenhouse gas emissions by 2050 (excluding IAS emissions). The Fifth Carbon Budget (2028-32), set on the same basis, is 1,725 MtCO<sub>2e</sub>, which requires an average of a 57% reduction.
35. On 9 December 2020, the CCC published its advice to the Government on the level of the Sixth Carbon Budget (for the period 2033-2037), which it recommended should be set at 965 MtCO<sub>2e</sub>, an average of a 78% reduction compared with 1990 levels. Importantly, this included IAS emissions.<sup>22</sup>
36. The Secretary of State for Business Energy and Industrial Strategy and the Prime Minister announced on 20 April 2021 that the Government accepted the CCC’s recommendation on setting the level of the Sixth Carbon Budget, and that the Sixth Carbon Budget would include the UK’s share of IAS emissions.<sup>23</sup> On that date the Government announced that it was “*already working towards its commitment to reduce emissions in 2030 by at least 68% compared to 1990 levels through the UK’s latest Nationally Determined Contribution*” and that the announcement of the Sixth Carbon Budget “*builds on this goal to achieve a 78% reduction by 2035.*” (emphasis added).
37. The draft Carbon Budget Order 2021 was laid before both Houses of Parliament on 21 April 2021, in line with the CCC’s advice, and on that date the Secretary of State for Business Energy and Industrial Strategy moved that it be approved.<sup>24</sup> The Carbon Budget Order 2021 was made on 23 June 2021 and came into force on 24 June 2021.

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<sup>21</sup> CCA 2008, Schedule 1

<sup>22</sup> CCC *The Sixth Carbon Budget – The UK’s path to Net Zero*, pg 13 <https://www.theccc.org.uk/wp-content/uploads/2020/12/The-Sixth-Carbon-Budget-The-UKs-path-to-Net-Zero.pdf>

<sup>23</sup> <https://www.gov.uk/government/news/uk-enshrines-new-target-in-law-to-slash-emissions-by-78-by-2035>

<sup>24</sup> <https://statutoryinstruments.parliament.uk/timeline/f0PehAJ5/SI-2021/>

### *Level of the existing Fourth and Fifth Carbon Budgets*

38. The setting of the Sixth Carbon Budget in 2021 has clear implications for the Fourth and Fifth Carbon Budgets, which were set in line with the previous 'at least 80% reduction' target for 2050 rather than the revised 'at least 100%' target now found in Section 1 of the CCA 2008. In its May 2019 report *Net Zero – The UK's contribution to stopping global warming*, the CCC stated that the existing Fourth and Fifth Carbon Budgets "are likely to be too loose".<sup>25</sup>
39. In its December 2020 report *The Sixth Carbon Budget – The UK's path to Net Zero*, the CCC calculated a difference of at least 28-68 MtCO<sub>2e</sub> a year (depending whether IAS emissions were included or excluded) in 2030 between the average emissions allowed by the Fifth Carbon Budget, and the CCC's "Balanced Pathway", which is a trajectory that if followed would allow the UK to just meet the 2030 NDC, the Sixth Carbon Budget and the 2050 'Net Zero' target.<sup>26</sup>
40. The CCC has thus advised that the Fifth Carbon Budget will need to be significantly outperformed to stay on track to meet the Sixth Carbon Budget and the 2050 'Net Zero' target.<sup>27</sup> Accordingly, the CCC has stated that "if the Government wish to align the fifth budget to our recommended NDC, it would need to change to 1,585 MtCO<sub>2e</sub>", assuming IAS emissions are included within the Fifth Carbon Budget.<sup>28</sup> This is a reduction in the existing Fifth Carbon Budget of 140 MtCO<sub>2e</sub>.
41. However, if IAS emissions are excluded from the Fifth Carbon Budget (as proposed by the Government, and in line with the UK's communicated 2030 NDC), the level of the Fifth Carbon Budget would need to change to 1,384 MtCO<sub>2e</sub> to align with the CCC's Balanced Pathway.<sup>29</sup> This is a reduction in the existing Fifth Carbon Budget of 341 MtCO<sub>2e</sub>, equivalent to a 20% tightening.
42. The CCC stated that the existing Fourth Carbon Budget is likely to be aligned with their Balanced Pathway already, and therefore does not require adjustment.

### *Failure to adopt policies to meet Fourth, Fifth and Sixth Carbon Budgets – the policy gap*

43. In October 2020, the Department of Business Energy and Industrial Strategy published the most recent annual set of emissions projections which show that under existing and planned policies (their 'Reference Scenario'), the UK is currently significantly off track to meet both the Fourth and Fifth Carbon Budgets. These projections assume that existing and planned policies achieve their aim; even so, they show the expected emissions reductions to only be 46% and 50% against 1990 levels for each budget period, rather than the required reductions of 51% and 57% respectively.<sup>30</sup> This is illustrated in the following figure and table:

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<sup>25</sup> CCC (2019) *Net Zero – The UK's contribution to stopping global warming*, pg 30.

<sup>26</sup> *The Sixth Carbon Budget – The UK's path to Net Zero*, pg 432 <https://www.theccc.org.uk/wp-content/uploads/2020/12/The-Sixth-Carbon-Budget-The-UKs-path-to-Net-Zero.pdf>.

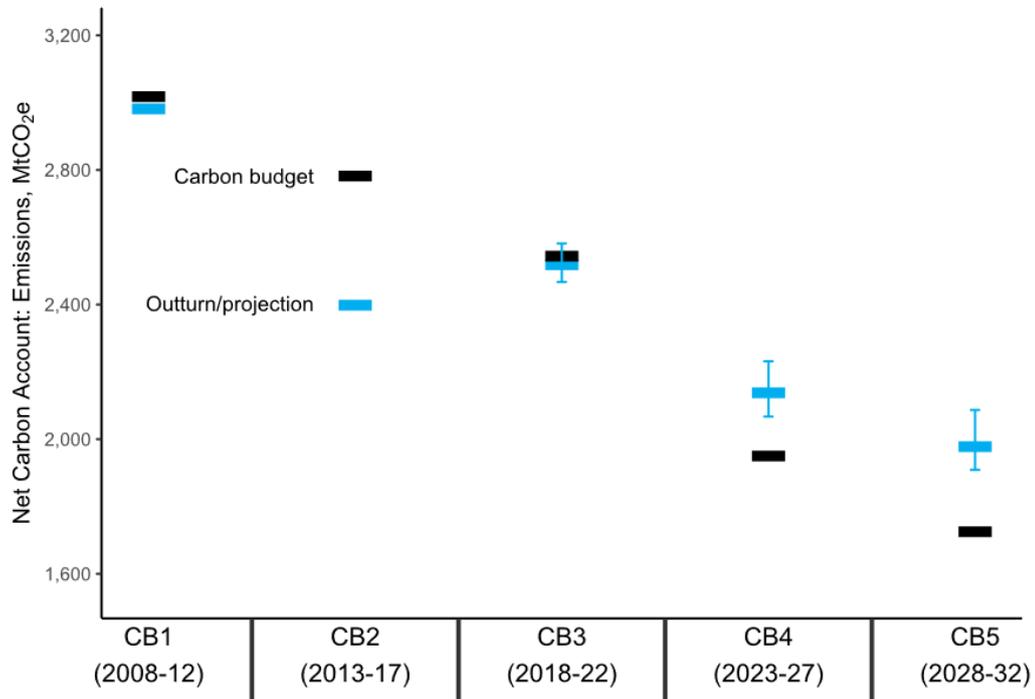
<sup>27</sup> CCC *The Sixth Carbon Budget – The UK's path to Net Zero*, pgs 24 and 430-433.

<sup>28</sup> CCC *The Sixth Carbon Budget – The UK's path to Net Zero* pg 433.

<sup>29</sup> CCC *Sixth Carbon Budget - Dataset*, "Different methodologies" tab, then selection of "Include international aviation and shipping?" drop-down = No, and summing Total UK emissions in cells N48-R48 = 1,384 MtCO<sub>2e</sub>. <https://www.theccc.org.uk/publication/sixth-carbon-budget/>

<sup>30</sup> Department for Business, Energy and Industrial Strategy, *Updated energy and emissions projections 2019*, October 2020, pp 14-15, <https://www.gov.uk/government/publications/updated-energy-and-emissions-projections-2019>

**Figure 2.2:** Actual and projected performance against carbon budgets, MtCO<sub>2</sub>e



**Table 2.1:** Net carbon account performance against carbon budgets, MtCO<sub>2</sub>e and per cent

		Carbon budget				
		CB1	CB2	CB3	CB4	CB5
		(2008-12)	(2013-17)	(2018-22)	(2023-27)	(2028-32)
		actual	actual	projected	projected	projected
Carbon Budget level [1]	emissions, MtCO <sub>2</sub> e	3,018	2,782	2,544	1,950	1,725
Average annual required reduction vs. base emissions	%	-24%	-30%	-36%	-51%	-57%
<b>EEP 2018</b>						
Reference scenario	projected emissions, MtCO <sub>2</sub> e	2,982	2,398	2,456	2,089	1,970
<b>EEP 2019</b>						
Reference scenario	projected emissions, MtCO <sub>2</sub> e	2,982	2,398	2,518	2,138	1,978
Result vs. Budget with reference case	emissions, MtCO <sub>2</sub> e	-36	-384	-26	188	253
Result vs. Budget with inclusion of CGS policy proposals [2]	emissions, MtCO <sub>2</sub> e	-36	-384	-26	158	173
Projected average annual reduction vs. base emissions [3]	%	-25%	-40%	-37%	-46%	-50%
Cumulative Result vs Budget	emissions, MtCO <sub>2</sub> e			-26	162	415

44. Working with these current projections, the cumulative policy gap up to the end of the Fifth Carbon Budget period is currently  $188 + 253 = 441$  MtCO<sub>2e</sub>, based on the existing Carbon Budget levels, no IAS emissions and no carry-overs of any surplus emissions. However, as the CCC has noted, there is a clear need to significantly outperform the Fifth Carbon Budget (or to lower the Fifth Carbon Budget level) to match the CCC's Balanced Pathway and stay on track for the 2050 Net Zero target. Taking account of the analysis in paragraph 41 above, the "true" cumulative policy gap at the end of 2032 between the Government's existing and planned policies and the CCC's Balanced Pathway is currently  $441 + 341 = 782$  MtCO<sub>2e</sub>.
45. On any metric, this gap is a monumental failure of policymaking. This cumulative policy gap at the end of 2032 exceeds the UK's total permissible emissions on the Balanced Pathway from January 2030 to December 2032 inclusive. It is effectively as if the Government is currently hoping that, in under a decade from now, the UK will miraculously stop emitting for three whole years, in order to stay on track to Net Zero.
46. On an annual basis, the UK's net carbon account in 2030 is projected under existing and planned policies to be 396 MtCO<sub>2e</sub> a year.<sup>31</sup> By comparison, the UK's annual emissions without IAS under the CCC's Balanced Pathway need to fall during the Fifth Carbon Budget period from 327 MtCO<sub>2e</sub> a year in 2028, to 276 MtCO<sub>2e</sub> a year in 2030 (the 2030 NDC), and to 226 MtCO<sub>2e</sub> a year in 2032.<sup>32</sup> The policy gap in 2030 alone is therefore at least 120 MtCO<sub>2e</sub> a year, meaning that, without a dramatic change of course, the Government will currently exceed its 2030 NDC by 43%.
47. The latest government projections were published in October 2020 before the Sixth Carbon Budget report, so any new policies and proposals in response to the Sixth Carbon Budget have not yet been included within the Government's annual projections. However, the overall requirement to reach Net Zero by 2050 and significantly increase policy ambition across all sectors has been clear since May 2019 when the CCC published its report *Net Zero – The UK's contribution to stopping global warming*, and the need for urgent action to prevent dangerous climate change has been clear since the publication of the IPCC's SR1.5 in October 2018.
48. During the Sixth Carbon Budget period 2033-2037, the cumulative difference between the Government's Reference scenario (which does not yet include IAS emissions) and the CCC's Balanced Pathway (taken without IAS for comparability) is a further 938 MtCO<sub>2e</sub> – a gap almost as big as the Sixth Carbon Budget itself.
49. In summary, the policy gap between what is required for the UK to follow a Net Zero compatible pathway and what is projected under existing and planned UK policies is therefore modest in the mid-2020s, large by 2030, and severe by the mid-2030s.
50. It has, for many years, also been plain from the CCC's Progress Reports to Parliament that this significant policy gap exists, and that this gap has been stubbornly persistent.
51. In its June 2016 Progress Report to Parliament, several years prior to the 2050 Net Zero target being set, the CCC highlighted a "gap of around 100 MtCO<sub>2e</sub> (47% of the required emissions

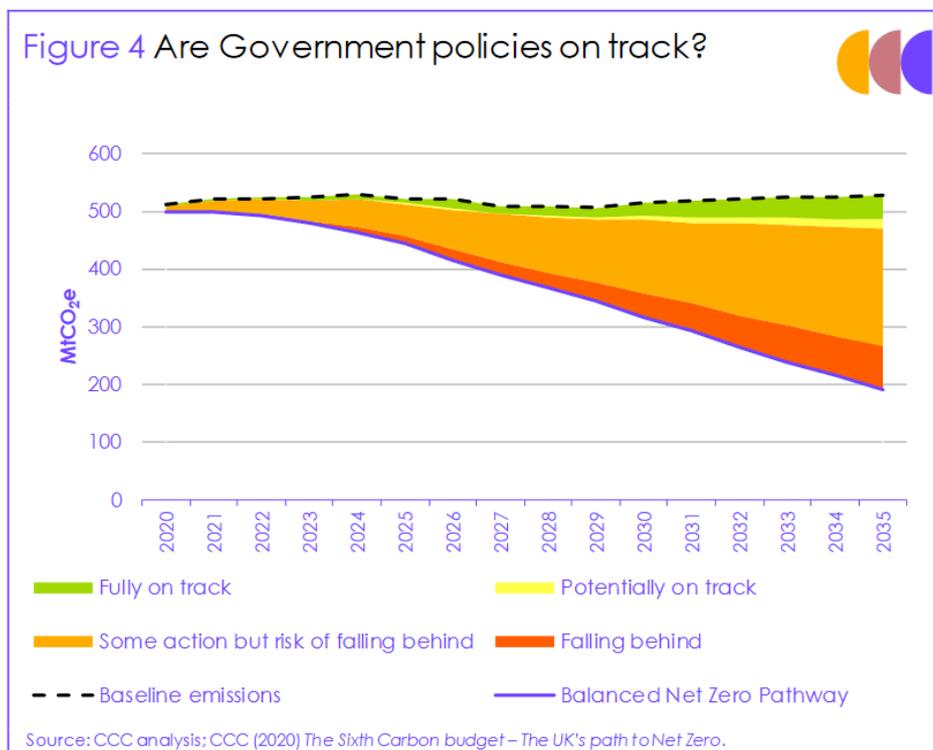
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<sup>31</sup> Department for Business, Energy and Industrial Strategy, 'Updated energy and emissions projections 2019', October 2020, annex A, Reference scenario tab, cell AP24 net UK carbon account in 2030 = 396 MtCO<sub>2e</sub> a year, <https://www.gov.uk/government/publications/updated-energy-and-emissions-projections-2019>

<sup>32</sup> CCC *Sixth Carbon Budget - Dataset*, "Different methodologies" tab of the Excel workbook, then selection of "Include international aviation and shipping?" drop-down = No, and examining Total UK emissions in cell P48 = 276 MtCO<sub>2e</sub> a year. Then selecting "Peatland assumption" drop-down = Low, "GWP assumption" drop-down = AR5 without CC feedbacks, and re-examining the same cell P48 = 260 MtCO<sub>2e</sub> a year. <https://www.theccc.org.uk/wp-content/uploads/2021/02/The-Sixth-Carbon-Budget-Dataset.xlsx>.

reduction) between Government plans and the path required to meet the recommended fifth carbon budget in 2030<sup>33</sup>. This is a smaller policy gap for 2030 than under current projections – so the policy gap has actually increased in the past five years.

52. In its June 2020 Progress Report to Parliament, the CCC highlighted that the UK failed on 17 out of 21 progress indicators, falling further behind in many areas, and that only two of 31 key policy milestones were met over the previous year.<sup>34</sup>
53. In its June 2021 Progress Report to Parliament, the CCC stated that “*In many cases, a strategic commitment has been made, but details of policy implementation have not yet caught up with the high-level ambition*”. The CCC’s Figure 4 below shows that only one-fifth of the emissions savings for the Sixth Carbon Budget period involve policies that are fully or potentially on track for delivery. The rest of the UK’s policies are falling behind or at risk of falling behind.<sup>35</sup>



54. In the same report, the CCC identified the following as “*essential elements of the transition to Net Zero*”:<sup>36</sup>
- Developing and implementing a comprehensive policy to enable the delivery of the 2030 transition to electric vehicles;
  - Implementing a policy package for buildings decarbonisation and enshrining the long-term standards framework in regulation;
  - Implementing delivery mechanisms for landscape-scale land use change for afforestation and peatland restoration and a high take-up of low-carbon farming practices;
  - Advancing policy for manufacturing decarbonisation;

<sup>33</sup> CCC (2016), *Meeting Carbon Budgets: 2016 Progress Report to Parliament*, pg. 13.

<sup>34</sup> CCC (2020), *Reducing UK emissions: Progress Report to Parliament*, pgs. 109 and 112.

<sup>35</sup> CCC (2021), *Progress in reducing emissions: 2021 Report to Parliament*, pgs. 26-27.

<sup>36</sup> CCC (2021), *Progress in reducing emissions: 2021 Report to Parliament*, pg 158.

- e. Continue auctions for low-carbon capacity, together with supporting actions to enhance system flexibility, to deliver an emissions intensity of 50 gCO<sub>2</sub>/kWh or better in electricity generation by 2030;
  - f. Delivering a hydrogen strategy that sets out a vision of the role of hydrogen on the path to Net Zero and the steps needed to realise it; and
  - g. Enabling domestic engineered greenhouse removals to contribute to UK carbon budgets and Net Zero, and establishing support mechanisms and monitoring verification and reporting structures.
55. The CCC also noted that "[t]he late publication of several strategies is also disappointing and means that we have only a partial picture of ambition".<sup>37</sup> In the last two months the Government has released some of the strategies on the CCC's list *for consultation*, including the Hydrogen Strategy, the Transport Decarbonisation plan and the Net Zero Aviation Strategy. However, it will take time for the consultation periods to run, following which the Government will need to consider the responses, revise the strategies as required and then adopt the strategies. There remain many "vital and long-promised plans, such as the Heat and Buildings Strategy and the Treasury's Net Zero Review" that have been delayed by a year or more and that remain outstanding.<sup>38</sup>
56. There is, therefore, a long history of the Government failing to close the policy gap to even the existing insufficient Carbon Budgets, and a failure so far in 2021 to deliver sufficient policies to meet the new Sixth Carbon Budget.
57. Whilst the Government's Net Zero Strategy, expected in autumn 2021 before COP26, might include further aspirations and plans for certain sectors, it appears highly unlikely that this will contain detailed policies fully closing the policy gap up to the end of 2037, or that all these detailed policies will have funding approval from HM Treasury. Several of the key strategies are still being developed today, and others have only recently been sent out for consultation regarding the overall framework and approach to be taken, so it will be many months or years before more detailed policies within these strategies are developed and their emissions impacts projected. Many policy proposals will also be subjected to Comprehensive Spending Review constraints.

*Carry forward of outperformance of previous carbon budgets*

58. The Second Carbon Budget was met with emissions of 384 MtCO<sub>2</sub>e below the level of the budget. The CCC's letter on 15 February 2019 regarding the carry forward of these 'surplus emissions' states: "*The Committee's unequivocal advice is that surplus emissions from the second carbon budget should not be carried forward*" and "*any carry-forward of the surplus would undermine the integrity of the UK's framework for emissions reduction under the Climate Change Act*".<sup>39</sup>
59. However, on 6 June 2019 the Government decided to take forward 88 MtCO<sub>2</sub>e of surplus emissions from the Second Carbon Budget into the Third Carbon Budget.<sup>40</sup> Whilst this carry-forward was stated as being conditional on understanding the extent of potential technical baseline changes, no justification for the value carried forward was provided, despite the CCC's questioning, and the Third Carbon Budget remains 88 MtCO<sub>2</sub>e looser today as a result. This carry-forward has not yet been cancelled, and could therefore also be carried forward into the Fourth Carbon Budget.

<sup>37</sup> *Ibid*, pg 22.

<sup>38</sup> CCC (2021), *Progress in reducing emissions: 2021 Report to Parliament*, pgs. 16, 100 and 140.

<sup>39</sup> CCC (15 February 2019) Carry-forward of surplus emissions: Letter from Lord Deben to Claire Perry <https://www.theccc.org.uk/publication/carry-forward-of-surplus-emissions-letter-from-lord-deben-to-claire-perry/>

<sup>40</sup> Department for Business, Energy & Industrial Strategy (6 June 2019), Chris Skidmore MP letter to Lord Deben [http://data.parliament.uk/DepositedPapers/Files/DEP2019-0626/Chris\\_Skidmore\\_to\\_Lord\\_Deben.pdf](http://data.parliament.uk/DepositedPapers/Files/DEP2019-0626/Chris_Skidmore_to_Lord_Deben.pdf)

60. On 9 December 2020, the CCC stated that with “*the extremely large outperformance for the Third Carbon Budget now expected, for reasons other than policy (i.e., changes in the EU ETS and the impact of COVID-19 on emissions), it is especially important that ‘surplus’ emissions are not carried forward.*” It advised that there is “*no justification to carry forward outperformance of the third or subsequent carbon budgets*” in meeting future carbon budgets.<sup>41</sup>
61. The CCC’s letter to the Government on 26 March 2021 reinforces this by stating that “*our clear advice is that such carry-forward of outperformance should not occur*” and specifically that “*we also reiterate our advice in the strongest terms that the expected large outperformance of the Third Carbon Budget should not be carried forward to help meet the fourth and subsequent budgets.*” (emphasis added). “*Any loosening of later carbon budgets that enables effort to be reduced is likely to increase risks in meeting subsequent carbon budgets and Net Zero, given the stretching nature of these targets.*”<sup>42</sup>

### *Adaptation*

62. The serious policy gap does not only exist in relation to the steps needed to reduce or mitigate climate change impacts. The fact that the global temperature in the first two decades of the 21<sup>st</sup> century was recorded as between 0.99 – 1.10°C higher than temperatures recorded between 1850-1900<sup>43</sup> means that, inevitably, we will experience some of the impacts of dangerous climate change in the UK. As a result, the Government is obliged to put in place policies required for adaptation to climate change.
63. In 2019, the CCC Report to Parliament entitled *Progress in preparing for climate change* concluded that the Government must raise the profile of and strengthen governance for adaptation over the coming decade to prepare for the impacts of climate change. The CCC emphasised that there was “*a substantial gap between current plans and future requirements and an even greater shortfall in action.*”<sup>44</sup> In uncharacteristically strong language, the CCC urged on the Government that it could not “*hide from [the] risks*” of failing to put in place adaptation planning, and stated:

*“The central premise of the Climate Change Act is that the Government of the day holds the responsibility to act to protect future generations. This principle is at risk if the priority given to climate policy is not substantially increased over the next year and the next Government spending review.*

*The need for action has rarely been clearer. Our message to government is simple: Now, do it.*”<sup>45</sup>

64. In June 2021, the CCC published its most recent report to Parliament entitled *Progress in adapting to climate change*. It followed the CCC’s publication of their June 2021 Climate Change Risk Assessment and reiterated the point made in that Assessment that the UK’s National Adaptation Programme has so far failed to prepare for a 2°C rise in global temperature “*let alone higher levels of warming*”. The CCC stated “*Government action has been inadequate to drive progress in most*

<sup>41</sup> CCC *The Sixth Carbon Budget – The UK’s path to Net Zero*, pg 435 <https://www.theccc.org.uk/wp-content/uploads/2020/12/The-Sixth-Carbon-Budget-The-UKs-path-to-Net-Zero.pdf>

<sup>42</sup> CCC (26 March 2021) *Advice on the use of international emissions credits*, Letter to Rt Hon Kwasi Kwarteng MP <https://www.theccc.org.uk/publication/letter-advice-on-the-use-of-international-emissions-credits-to-rt-hon-kwasi-kwarteng-mp/>

<sup>43</sup> IPCC 2021 SPM A.1.2.

<sup>44</sup> CCC *Progress in preparing for climate change: 2019 Report to Parliament*, pg 7.

<sup>45</sup> *Ibid.*

areas” and warned that the UK is less prepared now than it was five years ago.<sup>46</sup> Accordingly, despite the very clearest of warnings and recommendations from the CCC of the hugely urgent need to adopt policies to prepare for 2°C or more of global warming, government inaction has worsened the position.

65. In its June 2021 adaptation report the CCC stated that *“the UK does not yet have a vision for successful adaptation, nor measurable targets to assess progress. Not one of the 34 priority areas assessed in this year’s progress report on adaptation is yet demonstrating strong progress in adapting to climate risk.”*<sup>47</sup>
66. In the same report the CCC listed a number of policy recommendations aimed at government departments, including targets for boosting green spaces in cities, an overheating standard for building regulations and the banning of rotational burning on all peatlands. It also emphasised the fact that achieving Net Zero will require effective adaptation.

#### *Reliance on Negative Emissions Technologies*

67. Negative Emissions Technologies (“NETs”) are technologies that remove CO<sub>2</sub> emissions from the atmosphere, involving carbon capture and storage (“CCS”). As Professor Anderson and other climate scientists have explained, they are unproven at scale.<sup>48</sup> The form of NETs most often utilised in global climate pathway modelling is bioenergy with carbon capture and storage (“BECCS”), which Professor Anderson describes as *“essentially burning fast-growing fuel crops to produce electricity while capturing the CO<sub>2</sub> at source and storing it safely and permanently underground”*.<sup>49</sup>
68. For the avoidance of doubt, NETs, as defined by the CCC, do not include nature-based carbon sinks, such as afforestation, restoration of peatlands and wetlands, on-farm diversification, better woodland and hedge management, rewilding and other measures to enhance soil carbon stocks.
69. Professor Anderson is of the opinion that there are compelling reasons to be *“extremely cautious about emissions pathways that depend on huge amounts of negative emissions or carbon dioxide removal”*, and BECCS in particular, given:

- “(1) the as yet embryonic state of the CCS industry (thus far only one large demonstration power-station with CCS exists today with a number of years of operating experience, and this at only a few millions of tonnes of CO<sub>2</sub> per year, not the several orders-of-magnitude-greater billions of tonnes assumed in the models);*
- (2) the colossal quantities of land required to produce the requisite biomass (some BECCS-heavy scenarios requiring area equivalent to about half the global total agricultural land),*<sup>50</sup>

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<sup>46</sup> CCC *Progress in adapting to climate change: 2021 Report to Parliament*, pgs. 16-18

<sup>47</sup> CCC *Progress in adapting to climate change: 2021 Report to Parliament*, pg.10

<sup>48</sup> See: Professor Kevin Anderson’s evidence to Bristol Airport Inquiry (15 June 2021) at §4.12, [https://gat04-live-1517c8a4486c41609369c68f30c8-aa81074.divio-media.org/filer\\_public/6a/68/6a6828f8-060f-4181-acfc-644d28bf7937/baan-w1-1\\_prof\\_kevin\\_anderson-proof\\_final.pdf](https://gat04-live-1517c8a4486c41609369c68f30c8-aa81074.divio-media.org/filer_public/6a/68/6a6828f8-060f-4181-acfc-644d28bf7937/baan-w1-1_prof_kevin_anderson-proof_final.pdf); and Fajardy M, Köberle A, Macdowell N, & Fantuzzi A (2019), *BECCS deployment: a reality check*, Grantham Institute Briefing Paper no.28, <https://www.imperial.ac.uk/media/imperial-college/grantham-institute/public/publications/briefing-papers/BECCS-deployment---a-reality-check.pdf>

<sup>49</sup> *Ibid.*

<sup>50</sup> Fajardy M, Köberle A, Macdowell N, & Fantuzzi A (2019), *BECCS deployment: a reality check*, Grantham Institute Briefing Paper no.28. <https://www.imperial.ac.uk/media/imperial-college/grantham-institute/public/publications/briefing-papers/BECCS-deployment---a-reality-check.pdf>

*not to mention the threats to planetary boundaries for freshwater and biosphere/biodiversity conservation<sup>51</sup>.<sup>52</sup>*

70. Other NETs, such as direct air capture and enhanced geological weathering, similarly suffer the drawbacks of unproven-at-scale demonstrations. It is for these reasons that Professor Anderson explains that “NETs cannot be thought of as an ‘insurance policy’, since they come with no assurance that they will be able to ‘pay out’.”<sup>53</sup>
71. Whilst CCC scenarios to reach 2050 Net Zero do rely on the uptake of NETs (58 MtCO<sub>2</sub>e a year by 2050 in the CCC’s “Balanced Pathway”), the CCC themselves state that:
- “While reaching Net Zero will require some level of engineered greenhouse gas removals [NETs], these should not be relied upon to deliver unlimited offsets to remaining positive emissions. As well as being relatively immature technologically, there are limits to the quantity of sustainable bioenergy available to the UK, while direct air capture of CO<sub>2</sub> will be energy-intensive.”<sup>54</sup>*
72. The CCC also demonstrated in the Sixth Carbon Budget report that the UK’s 2050 Net Zero target is achievable without NETs and with only minimal CCS deployment, by achieving faster sector transitions and greater behaviour change than in the “Balanced Pathway”.<sup>55</sup>

#### *Tackling climate change and human rights obligations*

73. Climate change is largely the result of the historical and continued emissions from the activities of relatively wealthy individuals and countries, but its most damaging impacts will be experienced by those who are young today and by the generations which will follow them. The most acute impacts are occurring within already vulnerable communities and regions, but nowhere will be exempt from impacts. As set out above, the UK is already feeling significant impacts: coastal erosion is intensifying with rising sea levels, leading to loss of land at Skipsea, East Yorkshire (faster than any other coastline in Northern Europe), Fairbourne, North Wales, and Happisburgh, Norfolk.
74. In 2019, Michelle Bachelet UN High Commissioner for Human Rights said:
- “Climate change is a reality that now affects every region of the world ... The world has never seen a threat to human rights of this scope ... The economies of all nations; the institutional, political, social and cultural fabric of every state; and the rights of all your people - and future generations - will be impacted.”*
75. Article 2(1) of the ECHR provides that:
- “Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”*

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<sup>51</sup> Heck V, Gerten D, Lucht W et al, (2018). *Biomass-based negative emissions difficult to reconcile with planetary boundaries*. Nature Climate Change 8, 151–155. <https://www.nature.com/articles/s41558-017-0064-y>

<sup>52</sup> *Supra* Note 48, §4.13.

<sup>53</sup> *Supra* Note 48, §4.14.

<sup>54</sup> CCC *The Sixth Carbon Budget – The UK’s path to Net Zero*, pgs 27, 388. <https://www.theccc.org.uk/wp-content/uploads/2020/12/The-Sixth-Carbon-Budget-The-UKs-path-to-Net-Zero.pdf>

<sup>55</sup> CCC *The Sixth Carbon Budget – The UK’s path to Net Zero* pgs 90-91. <https://www.theccc.org.uk/wp-content/uploads/2020/12/The-Sixth-Carbon-Budget-The-UKs-path-to-Net-Zero.pdf>

76. In *Öneryildiz v Turkey*<sup>56</sup> the European Court of Human Rights (“**ECtHR**”) held that Article 2 imposes a positive duty on the State “to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life”<sup>57</sup> and that, in the context of dangerous activities, “special emphasis must be placed on regulations geared to the special features of the activity in question” which “must make it compulsory for all those concerned to take practical measures to ensure the effective protection of citizens whose lives might be endangered by the inherent risks”.<sup>58</sup> The ECtHR has also stated that whenever a State undertakes or organises dangerous activities, or authorises them, it must ensure through a system of rules and through sufficient control that the risk is reduced to a reasonable minimum.<sup>59</sup>
77. Similarly, in *Budayeva v Russia*,<sup>60</sup> the Court held that: “[t]he scope of the positive obligations [under Article 2] imputable to the State in the particular circumstances would depend on the origin of the threat and the extent to which one or the other risk is susceptible to mitigation”;<sup>61</sup> and that Article 2 imposes a duty “to do everything within the authorities’ power in the sphere of disaster relief for the protection of that right [to life]”.<sup>62</sup>
78. Article 8 of the ECHR provides that:
- “1) Everyone has the right to respect for his private and family life, his home and his correspondence.  
2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”
79. In *Tatar v Romania*<sup>63</sup> the ECtHR held that Article 8 imposes a positive obligation on States to adopt reasonable and sufficient measures capable of protecting the right to a private life, a home and, more generally, a healthy, protected environment. The ECtHR has also held that the positive obligation requires that the measures not only exist but are implemented in practice, to ensure that the Article 8 rights are effective and not illusory.<sup>64</sup>
80. The positive obligation arises where there is a sufficient causal link between the impugned activity and the adverse impact on persons within the jurisdiction. The positive obligation also arises if there is a serious and substantial threat to the health and well-being of persons within the jurisdiction.<sup>65</sup> In this respect, the ECtHR stressed the importance of the precautionary principle<sup>66</sup>, given its aim to secure a high level of protection for the health and safety of persons and the environment.<sup>67</sup> Physical and mental health are both crucial parts of private life associated with the aspects of physical and

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<sup>56</sup> App no 48939/99 (ECtHR GC, 30 November 2004).

<sup>57</sup> *Ibid*, §89.

<sup>58</sup> *Ibid*, §90.

<sup>59</sup> *Mučibabić v Serbia*, App no 34661/07 (ECtHR, 12 July 2016), §126.

<sup>60</sup> *Budayeva v Russia*, App no 15339/02 inter alia, (ECtHR, 20 March 2008).

<sup>61</sup> *Ibid*, §137.

<sup>62</sup> *Ibid*, §175.

<sup>63</sup> *Tatar v Romania*, App no 67021/01 (ECtHR, 27 January 2009), §170.

<sup>64</sup> *Moreno Gomez v Spain*, App no 4143/02 (ECtHR, 16 November 2004), §56.

<sup>65</sup> See *Tatar v Romania*, §107.

<sup>66</sup> See also Article 3(3) of the UNFCCC which requires States to “take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects”.

<sup>67</sup> *Tatar v Romania*, §120.

moral integrity;<sup>68</sup> and in *Tatar* the ECtHR also found a violation of Article 8 in circumstances where the applicants had lived in a state of anxiety, uncertainty and fear.<sup>69</sup>

81. Significantly, the obligations outlined above apply to risks that may only materialise in the future.<sup>70</sup>

82. Article 14 of the ECHR provides that:

*“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”*<sup>71</sup>

## Grounds of Claim

### **Ground one: Continuing failure to close the policy gap to meet the Fourth and Fifth Carbon Budgets**

83. The Claimants contend that the Defendants’ continuing failure to prepare proposals and policies that would enable the existing insufficient Fourth and Fifth Carbon Budgets to be met breaches section 13(1) of the CCA 2008 and violates their rights protected by Articles 2 and 8 of the ECHR - taken together, in the case of the First Claimant, with Article 14 of the ECHR, in circumstances where she will live longer than older generations and the impacts of climate change will continue to worsen in the future.

84. As set out above, the CCC and others have, for a number of years, warned the Government that there was a policy gap in relation to the existing Fourth and Fifth Carbon Budgets and the CCC has in its recent reports repeatedly made clear the seriousness and extent of that policy gap.

85. Given that the CCC made it very clear in their Sixth Carbon Budget report that the policy gap during the Fourth and Fifth Carbon Budget periods is now even wider due to the requirement to follow a tighter “Balanced Pathway” that will ultimately achieve the 2050 ‘Net Zero’ target (set in June 2019), the Defendants have been well aware since at least December 2020 that there was the utmost urgency in addressing this new wider policy gap. By failing to take requisite urgent measures to address the policy gap to the Balanced Pathway, the Defendants have breached section 13(1) of the CCA 2008 and violated the Claimants’ rights protected by Articles 2 and 8 of the ECHR taken together, in the case of the First Claimant, with Article 14 of the ECHR (for the reasons set out above).

### **Ground two: Breach of sections 13 and 14 of the CCA 2008 in relation to the Sixth Carbon Budget**

86. Further, the Claimants contend that the Defendants have failed to comply with section 14(1) of the CCA 2008, in that they have not published “as soon as is reasonably practicable” after the making of the order setting the Sixth Carbon Budget “a report which sets out the proposals and policies for meeting the carbon budgets for the current and future budgetary periods up to and including that period”.

87. In determining what constitutes “as soon as reasonably practicable”, it is relevant that:

- a. The CCC’s advice on the Sixth Carbon Budget was published on 9 December 2020;

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<sup>68</sup> *Bensaid v United Kingdom*; App no 44599/98 (ECtHR, 6 February 2001), §47.

<sup>69</sup> *Tatar v Romania*, §122.

<sup>70</sup> See, e.g., *Oneriyildiz v Turkey*, §§98-101.

<sup>71</sup> ‘Other status’ can include age: see *Schwizgebel v Switzerland*, App no 25762/07, 10 June 2010.

- b. The CCC recommended that the Sixth Carbon Budget be brought into law and that a comprehensive set of policies and proposals that would demonstrably meet that Carbon Budget be published “*without delay, in the first half of 2021*”<sup>72</sup> (a recommendation that was made against the background of years of advice that government action has been too little, too late);
  - c. The CCC stated that “*Such prompt action would demonstrate the UK’s climate credentials as president of COP26 and would give confidence to businesses looking to invest and make their own Net Zero transitions. It is necessary given the scale and speed of change required.*”;
  - d. The CCC also stated that “*We expect to report on the Government’s strategies in our next annual Progress Report in June 2021.*”; and
  - e. The Government was, by 20 April 2021, committed to setting the Sixth Carbon Budget at the level recommended by the CCC, including IAS emissions.
88. Accordingly, while the Carbon Budget Order 2021 was only made on 24 June 2021, the Defendants’ continuing failure to publish “*a report which sets out the proposals and policies for meeting*” the Sixth Carbon Budget, whether that be in the form of a Net Zero Strategy or otherwise, constitutes a breach of sections 13 and 14(1) of the CCA 2008.

***Ground three: Continuing failure to close the adaptation policy gap***

89. We set out above the dire position in relation to climate adaptation policies: a significant and deeply concerning policy gap, requiring urgent action, was identified by the CCC in 2019, but the Government failed to respond and the position on adaptation has now worsened.
90. Section 58 of the CCA 2008 requires the Secretary of State to lay before Parliament proposals and policies for adaptation to climate change. This requires the Defendants to take practical and effective measures to develop and adopt policies which adapt to and prepare for the impact of climate change, in light of the scientific evidence and the advice of the CCC. The Defendants have patently failed to do this; that failure is continuing.
91. The Defendants’ failure to address the serious policy gap in relation to climate adaptation, of which they were made aware, in no uncertain terms, in 2019, also violates the Claimants’ rights protected by Articles 2 and 8 of the ECHR taken together, in the case of the First Claimant, with Article 14 of the ECHR (for the reasons set out above).
92. In addition, the Claimants contend that the Government’s Net Zero Strategy (and/or any other report published which purports to comply with CCA 2008) must integrate a significant number of policies relating to climate adaptation, otherwise Net Zero will not be achieved. Failure to integrate such adaptation policies into mitigation strategies breaches section 13 of the CCA 2008 and places the Claimants, youth and future generations in a position where their lives, homes and family life are placed at risk, in breach of Articles 2 and 8 of the ECHR taken together, in the case of the First Claimant, with Article 14 of the ECHR (for the reasons set out above).

***Ground four: Reliance on NETs should be strictly limited***

93. Further, the Claimants contend that the Net Zero Strategy (and/or any other report published which purports to comply with CCA 2008) should not rely upon NETs such as BECCS, direct air capture or other untested, high-risk technological solutions for carbon removal, and CCS use should be minimised to only situations where no other decarbonisation option is possible. As has been noted

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<sup>72</sup> *The Sixth Carbon Budget – The UK’s path to Net Zero* pg.31. The CCC recommended that the Government “Develop a Net Zero Strategy without delay to deliver the [Sixth Carbon] budget, [2030] NDC and 2050 target”.

above, the CCC has demonstrated that the 2050 Net Zero target is achievable without NETs and with only minimal CCS deployment.<sup>73</sup>

94. It is noteworthy that Professor Robert Watson has said “*Relying on untested carbon dioxide removal mechanisms to achieve the Paris targets when we have the technologies to transition away from fossil fuels today is plain wrong and foolhardy. Why are we willing to gamble the lives and livelihoods of millions of people, the beautiful life around us, and the futures of our children.*”<sup>74</sup> To rely upon such untested, high-risk technological solutions would be reckless and contrary to the precautionary principle. It would place the Claimants, youth and future generations in a position where their lives, homes and family life are placed at risk, in breach of Articles 2 and 8 of the ECHR taken together, in the case of the First Claimant, with Article 14 of the ECHR (for the reasons set out above).
95. NETs are still worthy of development support, in the event that their numerous technical, cost and environmental challenges can all be overcome, but until they are proven to be sustainable at commercial scale (which may never occur), they should not be relied on to meet the UK’s obligations under the CCA 2008.

#### **Details of the action the Defendants are expected to take**

96. The Claimants expect the Government to publish the Net Zero Strategy by 20 September 2021, with policies and proposals that have full financial backing from HM Treasury, and which will ensure that the existing Fourth and Fifth Carbon Budgets are exceeded and that the Sixth Carbon Budget is met. The Net Zero Strategy must fully close the policy gap, so that the forthcoming autumn government emissions projection shows no difference in cumulative emissions to the end of 2037 between the Reference scenario and the CCC’s Balanced Pathway. Policies and proposals to plug the gap in meeting the existing misaligned Fourth and Fifth Carbon Budgets are years overdue and as indicated above, the CCC recommended that the Net Zero Strategy be published by June 2021. The Claimants are now justified in setting the Government a deadline given its consistent failure to publish a comprehensive policy package and the urgent need for it to do so ahead of COP26.
97. In addition, the Defendants should publish adaptation policies and ensure that they are properly integrated in the Net Zero Strategy in accordance with the CCC’s recommendation.
98. Further, the Defendants should ensure that the Net Zero Strategy is not based upon NETs, or if they are included, that NETs are only providing additional reductions in emissions beyond the requirements of the CCA 2008.
99. Finally, and in light of the CCC’s advice in the strongest terms to avoid the carry-forward of outperformance of carbon budgets to subsequent carbon budgets (as any loosening increases the risk in meeting later carbon budgets and Net Zero and undermines the basis on which each carbon budget was set), the Defendants should confirm that there will no longer be any carry-forward of surplus emissions.

#### **Costs**

100. If a claim is pursued it will plainly be an Aarhus claim to which the cost protection of CPR r.45.41 will therefore apply. As a consequence, each Claimant’s liability for the costs of other parties should be limited to £5,000 each and their joint recovery of costs should be limited to £35,000.

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<sup>73</sup> CCC *The Sixth Carbon Budget – The UK’s path to Net Zero* pgs. 90-91.

<sup>74</sup> Robert Watson, Emeritus Professor in Environmental Sciences, University of East Anglia, <https://www.inverse.com/science/climate-scientists-say-achieving-net-zero-is-not-nearly-enough>

101. In accordance with the pre-action protocol for Judicial Review we request you confirm that the costs position is agreed. If you disagree, please fully explain why.

**Disclosure and the Defendants' duty of candour**

102. Please provide immediate disclosure (and in any event by the below deadline) of any and all relevant documents.

**ADR proposals**

103. We do not currently consider that these issues are suitable for alternative dispute resolution but would be pleased to consider any proposals you have for this.

**Legal advisers and address for reply / service of court documents**

104. Wessen Jazrawi and Luke Grimes of Hausfeld & Co. LLP are dealing with this matter. Please forward all future correspondence to them at [wjazrawi@hausfeld.com](mailto:wjazrawi@hausfeld.com) and [lgrimes@hausfeld.com](mailto:lgrimes@hausfeld.com) using reference L0322.0001.

**Proposed reply date**

105. Please reply within 14 days of the date of this letter, i.e., by no later than 20 September 2021.

Yours faithfully,



**Hausfeld & Co. LLP**

cc: The Committee on Climate Change (FAO Chris Stark, [private.secretary@theccc.org.uk](mailto:private.secretary@theccc.org.uk))